March 2, 2001

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2001-0817

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your requests were assigned ID# 144654, 144770, and 144956.

The Tarrant County District Attorney's Office (the "D.A.") received two requests for information, paraphrased as follows:

> 1. Beginning August 29, 2000, an "update" in electronic form of "jail booking data" from the "CJMAST Database."
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> 2. Beginning January 1, 2000, a "list of cases" the D.A. has received, including whether the case was prosecuted and how it was adjudicated, in which an individual was charged with a violation of Article 62.10 of the Code of Criminal Procedure.

We understand with respect to both requests that information responsive to the request is contained in the county's criminal database. This database was the subject of this office's decision in Open Records Letter Ruling No. 00-4696 (2000) (copy enclosed). Relying on this ruling, you have stated in correspondence to each requestor that the D.A. "is prohibited from releasing information from the county's criminal database and may only provide information from [the D.A.'s] paper files." With respect to the second request, responsive information evidently exists in "paper files" maintained by the D.A. In response to the

second request, you have stated in correspondence to the requestor that Open Records Letter Ruling No. 00-4696 "appears to prohibit" the D.A. from using the county's criminal database to respond to the request.[1] You ask this office for a "previous determination" under section 552.301(a) of the Government Code with respect to the information contained in the county's criminal database. Before we address your request for a previous determination, we must clarify the conclusions of Open Records Letter Ruling No. 00-4696 (2000).

We note at the outset that the D.A. is a governmental body as defined in the Act. Gov't Code § 552.003; *see also Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Thus, information that is "collected, assembled, or maintained" *by or for the D.A.* "under a law or ordinance or in connection with the transaction of official business" is "public information" subject to the Act. Gov't Code § 552.002. Such "public information" is information that the D.A. is required by the Act to make available to the public, unless one or more of the Act's exceptions to disclosure applies to the information.

In Open Records Letter Ruling No. 00-4696 (2000), this office considered information contained in the county's criminal database, to which the D.A. subscribes and thus has access like any other member of the public. We considered in the ruling whether the information in the county's criminal database meets the definition of "public information" under the Act. We concluded that the database is *not* information that is collected, assembled or maintained by or for the D.A.. Rather, it is information that is "collected, assembled, or maintained by or for the judiciary." As such, the ruling further concluded, the public availability of the information in the county's criminal database is not governed by the Act, and instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules" pertaining to information of the judiciary. Gov't Code § 552.0035(a). But this conclusion does not mean, as you appear to have stated in correspondence to the present requestors, that the D.A. is prohibited by the Act from the releasing to the public information that is contained in the county's criminal database. Rather, this conclusion simply means that the Act does not apply to the county's criminal database. Thus, with respect to information that is requested from the D.A. where the responsive information is contained only in the county's criminal database, the Act is inapplicable. Instead, the D.A. must comply with the "rules adopted by the Supreme Court of Texas or by other applicable laws and rules" that govern this information of the judiciary.

We also stated in Open Records Letter Ruling No. 00-4696 that the D.A. "may retrieve the requested information from paper records in its individual case files . . .." Hence, your

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[1]In your comments to this office pertaining to the second request, you thus state that if the D.A. "is prohibited from performing [the requisite] research on the county's criminal database," the cost estimate to provide [the responsive] information [that is contained in the D.A.'s paper files] is approximately $32,000.00." Evidently, then, the most efficient means for the D.A. to identify and retrieve the D.A.'s paper records that are responsive to the second request would be for the D.A. to perform "research" using the county's criminal database.

statement to the present requestors that the D.A. "may only provide information from [the D.A.'s] paper files." Our reference in Open Records Letter Ruling No. 00-4696 to "paper files" is based on the reasonable assumption that any information contained on paper in the D.A.'s case files constitutes information "collected, assembled, or maintained" by or for the D.A. "under a law or ordinance or in connection with the transaction of official business." In other words, such information is held by the D.A., a governmental body subject to the Act, and further it meets the definition of "public information" under the Act. Thus, unlike the county criminal database, the public availability of this "public information" is governed by the Act. The Act requires that such information requested from the D.A. be made available to the public, unless the information is excepted from disclosure under the Act.[2]

We did not intend Open Records Letter Ruling No. 00-4696, however, to imply that the form of information requested from the D.A. determines whether the Act governs the information. *See* Gov't Code § 552.002(b), (c) ("public information" under the Act includes information on various media). Rather, it is whether the information meets the definition of "public information" at section 552.002(a) of the Government Code that determines whether the Act governs the information. With respect to requests made of the D.A. in which responsive information is contained in the county's criminal database, which is not governed by the Act, the issue then is whether any responsive information is also "collected, assembled, or maintained" by or for the D.A. Such information, which the D.A. owns or to which the D.A. has a right of access, constitutes information that is governed by the Act because it meets the definition of "public information." Gov't Code § 552.002(a). This is true regardless of the form of the information and therefore is not necessarily limited to the D.A.'s paper records.

By way of illustration, if the D.A., in order to prosecute a case, collected and maintains information in electronic form — including information the D.A. may have obtained from the county criminal database — such information in the D.A.'s prosecution file that is later requested from the D.A. under the Act is information that is governed by the Act, notwithstanding the fact that the information is in electronic rather than paper form, and notwithstanding the fact that the information, in whole or in part, may also happen to exist in the county criminal database. This is because, at the time the D.A. received the request for the information, the information met the definition of "public information" at section 552.002(a) of the Government Code.

On the other hand, if the D.A. holds no information responsive to a request and instead would have to copy information from the county criminal database in order to respond to a public information request, such information is not governed by the Act. This is because the information in the county criminal database is information of the judiciary and does not meet

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[2]Thus, if the D.A. seeks to withhold any such information from the public, absent a previous determination, the D.A. must request a decision from this office in accordance with section 552.301 of the Government Code. Gov't Code § 552.301(a).

the definition of "public information" under the Act.[3] Even if, subsequent to the D.A's receipt of the request, and for the sole purpose of responding to the request, the D.A. were to "print out" onto paper the responsive information from the county criminal database, the Act would not govern the resulting paper records with respect to the previously received request. The source of the information was the county criminal database — judicial records that are not governed by the Act — and the information did not meet the definition of "public information" at the time the D.A. received the public information request because it did not exist in any form in the D.A's records. The information did not belong to the D.A., nor was it otherwise held by the D.A. for any purpose, prior to the D.A.'s receipt of the request.[4]

Having clarified our prior ruling, we conclude that if the sole information that is responsive to a request made of the D.A. exists only in the county's criminal database, the public availability of the responsive information, as explained above, is not governed by the Act and is instead governed by "rules adopted by the Supreme Court of Texas or by other applicable laws and rules" pertaining to information "collected, assembled, or maintained" by or for the judiciary. Gov't Code § 552.0035. With respect to such information, the D.A. may rely on this decision as a previous determination under section 552.301(a) of the Government Code that the information is not governed by the Act, and the D.A. is therefore not required to request a decision of this office under section 552.301 of the Government Code with respect to future requests made of the D.A. for such information. We next turn to the present requests.

With respect to the first request, it appears that there existed no information collected, assembled, or maintained by or for the D.A. that was responsive to this request at the time the D.A. received the request. Evidently, the sole responsive information exists only in the county's criminal database. The Act therefore does not govern the information that is responsive to the first request. Likewise, to the extent information responsive to the second request existed only in the county's criminal database at the time the D.A. received the second request, such information is also not governed by the Act.

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[3]Such information of the judiciary does not belong to the D.A. and was not collected, assembled, or maintained by or for the D.A., notwithstanding the fact that the D.A. has a right of access to the information.

[4]It is implicit in several provisions of the Act that the Act applies only to "public information" already in existence at the time a governmental body receives a request. *See* Gov't Code § 552.002, .021, .227, .351. Thus, the Act does not require a governmental body to prepare new information in response to a request. Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (19900, 555 at 1-2 (1990), 416 at 5 (1984). Accordingly, if the *only* information that is responsive to a request made of the D.A. exists *solely* in the county's criminal database, which database is not the D.A.'s information but instead is information of the judiciary, the D.A. would have no information responsive to the request and the Act would not require the D.A. to copy information from the database in order to respond to the request. The D.A. may nevertheless provide the information to the requestor if the D.A. is permitted to do so under the laws and rules that are applicable to judicial records.

But there evidently existed information responsive to the second request that was "collected, assembled, or maintained" by or for the D.A. at the time the D.A. received the second request. Such information is subject to the Act. In stating that Open Records Letter Ruling No. 00-4696 "appears to prohibit" the D.A. from making use of the county's criminal database to respond to the second request, you appear to ask this office whether the D.A. may make use of the county's criminal database to more efficiently identify and locate the particular responsive information that is governed by the Act. We do not agree that Open Records Letter Ruling No. 00-4696 prohibits the D.A. from making such use of the county's criminal database. There is a clear distinction between the D.A. making internal use of the database to which the D.A. subscribes in order for the D.A. to conduct official business (which includes responding to public information requests), and the D.A. releasing to the public information from the database. If the D.A. must make use of the database in order to more efficiently identify and locate information that is governed by the Act, our holding in Open Records Letter Ruling No. 00-4696 does not prohibit the D.A. from doing so. Indeed, we are aware of no provision of law that prohibits the D.A. from making such use of the database. Such internal use of the database by the D.A. would not constitute a release to the public of any of the information contained in the database, and none of the information provided this office with respect to the present or the prior ruling of this office indicates that such use of the database by the D.A. would violate any court order pertaining to the database, or any agreement pertaining to the database to which the D.A. is a party. We accordingly conclude that the D.A. is not prohibited from using the database internally to assist the D.A. in efficiently identifying and locating requested information that is governed by the Act. *See also* Open Records Decision No. 561 at 8 (1990) (a governmental body must make a good faith effort to relate a request to information which it holds). As you assert no exceptions for the information that is governed by the Act and that is responsive to the second request, we conclude that the D.A. must release such information to the requestor.[5]

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

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[5] As to your estimate of costs approximating $32,000.00 in order for the D.A. to respond to the second request, which is based on your erroneous assumption that the D.A. is prohibited from internally using the county's criminal database to identify and locate responsive information that is governed by the Act, we note that this decision does not address the Act's cost provisions. Questions pertaining to costs under the Act should be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Michael Garbariho
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 144654, 144770, and 144956

Encl. Open Records Letter Ruling No. 00-4696 (2000)

cc: Mr. Jeff Claassen
Fort Worth Star-Telegram
400 West 7th Street
Fort Worth, Texas 76102
(w/ enclosure)

The Honorable Chris Harris
Chris Harris & Associates, P.C.
1307-A West Abram, Suite 101
Arlington, Texas 76013
(w/ enclosure)

Mr. Jason Sickles
KTVT Television
10111 North Central Expressway.
Dallas, Texas 75231
(w/ enclosure)

Mr. Tom Wilder
Tarrant County District Clerk
401 West Belknap
Fort Worth, Texas 76196-0402
(w/ enclosure)